

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

SCOTT HANNAY and)	
TERESA HANNAY, individually,)	
and as husband and wife,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-21-1190-D
)	
THE CITY OF BETHANY ,)	
)	
Defendants.)	

ORDER

This action was removed from the District Court of Oklahoma County, Oklahoma by Defendant City of Bethany on December 21, 2021. [Doc. No. 1]. Plaintiffs allege the City’s sewer line caused damage to their home. They brought several state law claims against the City; the only federal claim in this matter is Plaintiff’s claim for taking without just compensation. Plaintiffs based this claim in the Fifth and Fourteenth Amendments to the United States Constitution and OKLA. CONST. art. II, § 23. [Doc. No. 1-3] at p.8.

After Defendant filed the Notice of Removal [Doc. No. 1], Plaintiffs filed a motion seeking an order either (1) severing the state law claims, remanding them to state court, and staying the federal case during the pendency of that state court suit or (2) consolidating this matter with a different state court suit. [Doc. No. 6]. Defendant responded in opposition [Doc. No. 7], and Plaintiffs filed a reply [Doc. No. 8].

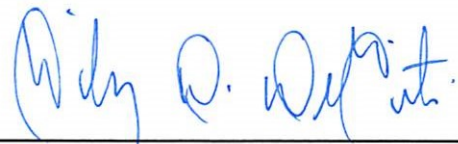
Plaintiffs, in their reply brief, appear to seek a dismissal of the federal aspect of their takings claim against Defendant. *See* Reply [Doc. No. 8] at pp. 6–7. Under federal law, a

“plaintiff is the ‘master of the claim’ and may prevent removal to federal court by choosing not to plead a federal claim even if one is available.” *See Turgeau v. Admin. Review Bd.*, 446 F.3d 1052, 1060 (10th Cir. 2006) (internal quotation omitted). Thus, while “a plaintiff may not defeat removal by failing to plead federal questions that are essential elements of his claim,” *id.* at 1060-61 (internal quotation omitted), the plaintiff “may avoid federal jurisdiction by exclusive reliance on state law.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

Without the federal takings claim, this Court lacks jurisdiction in this matter. In abundance of caution, however, the Court orders Plaintiffs to clarify whether they seek to dismiss their sole federal claim under Fed. R. Civ. P. 41(a)(2).

IT IS THEREFORE ORDERED that Plaintiffs shall state whether they seek voluntary dismissal of their federal takings claim under Fed. R. Civ. P. 41(a)(2) within fourteen days of this Order.

IT IS SO ORDERED this 21st day of March, 2022.



TIMOTHY D. DeGIUSTI
Chief United States District Judge